

foreclosure. The tribe may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the afford-

ability period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family of business ties, obtains an ownership interest in the project or property.

Activity	Minimum period of affordability in years
Rehabilitation or acquisition of existing housing per unit amount of HOME funds: Under \$15,000	5
\$15,000 to \$40,000	10
Over \$40,000	15
New construction or acquisition of newly constructed housing	20

(b) *Rent schedule and utility allowances.* The grantee must review and approve rents proposed by the owner for units with "flat rents," i.e., units subject to the maximum rent limitations in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(2)(ii) of this section, and, if applicable, must review and approve, for all units subject to the maximum rent limitations paragraph (a) of this section, the monthly allowances, proposed by the owner, for utilities and services to be paid by the tenant. The owner must reexamine the income of each tenant household living in lower income units at least annually. The maximum monthly rent must be recalculated by the owner and reviewed and approved by the grantee annually, and may change as changes in the applicable gross rent amounts, the income adjustments, or the monthly allowance for utilities and services warrant. Any increase in rents for low-income units is subject to the provisions of outstanding leases; in any event, the owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents.

(c) *Increases in tenant income.* Rental housing qualifies as affordable housing despite a temporary noncompliance with paragraphs (a)(2) or (a)(3) of this section, if the noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected. Tenants who no longer qual-

ify as low-income families must pay as rent the lesser of the amount payable by the tenant under tribal, State or local law or 30 percent of the family's adjusted monthly income, as recertified annually. The preceding sentence shall not apply with respect to funds made available under this part for units that have been allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of the Internal Revenue Code 1986 (26 U.S.C. 7805).

(d) *Adjustment of qualifying rent.* HUD may adjust the qualifying rent established for a project under paragraph (a)(1) of this section, only if HUD finds that an adjustment is necessary to support the continued financial viability of the project and only by an amount that HUD determines is necessary to maintain continued financial viability of the project. HUD expects that this authority will be used sparingly. Adjustments in section 8 fair market rents and in median income over time should help maintain the financial viability of a project within the qualifying rent standard in paragraph (a)(1) of this section. Regardless of changes in fair market rents and in median income over time, the qualifying rents are not required to be lower than the HOME rent for the project in effect at the time of project commitment.

§ 954.307 Homeownership: qualification as affordable housing.

(a) *Purchase with or without rehabilitation.* Housing that is for purchase by a family qualifies as affordable housing

only if the housing: (1)(i) Has an initial purchase price that does not exceed 95% of the median purchase price for the type of single family housing (1- to 4-family residence, condominium unit, cooperative unit, combination manufactured home and lot, or manufactured home lot) for the area as determined by HUD, and which may be appealed in accordance with 24 CFR 203.18b; and

(ii) Has an estimated appraised value at acquisition, if standard, or after any repair needed to meet property standards in § 954.401, that does not exceed the limit described in paragraph (a)(1)(i) of this section.

(2) Is the principal residence of an owner whose family qualifies as a low-income family at the time of purchase; and

(3) Is subject—for minimum periods of: 5 years where the per unit amount of HOME funds provided is less than \$15,000; 10 years where the per unit amount of HOME funds provided is \$15,000 to \$40,000; and 15 years where the per unit amount of HOME funds provided is greater than \$40,000—to resale restrictions, as described in paragraph (a)(3)(i) of this section, or recapture provisions, as described in paragraph (a)(3)(ii) of this section, that are established by the grantee and determined by HUD to be appropriate.

(i) Resale restrictions must make the housing available for subsequent purchase only to a low income family that will use the property as its principal residence; and

(A) Provide the owner with a fair return on investment, including any improvements; and

(B) Ensure that the housing will remain affordable, pursuant to deed restrictions, covenants running with the land, or other similar mechanisms to ensure affordability, to a reasonable range of low-income homebuyers. The affordability restrictions must terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD. The grantee may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restric-

tions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event reacquires title to the property.

(ii) A grantee's recapture provisions must provide for the recapture of the full HOME investment out of net proceeds, except as provided in paragraph (a)(3)(ii)(B) of this section.

(A) Net proceeds means the sales price minus loan repayment and closing costs.

(B) If the net proceeds are not sufficient to recapture the full HOME investment plus enable the homeowner to recover the amount of the homeowner's downpayment, principal payments, and any capital improvement investment, the grantee's recapture provisions may allow the HOME investment amount that must be recaptured to be reduced. The HOME investment amount may be reduced pro rata based on the time the homeowner has owned and occupied the unit measured against the required affordability period; except that the grantee's recapture provisions may not allow the homeowner to recover more than the amount of the homeowner's downpayment, principal payments, and any capital improvement investment.

(C) The HOME investment that is subject to recapture is the HOME assistance that enabled the first homebuyer to buy the dwelling unit. This includes any HOME assistance, whether a direct subsidy to the homebuyer or a construction or development subsidy, that reduced the purchase price from fair market value to an affordable price. The recaptured funds must be used to carry out HOME-eligible activities. If no HOME funds will be subject to recapture, the provisions at § 954.306(a)(3)(i) apply.

(D) Upon recapture of the HOME funds used in a single-family, homebuyer project with two to four units, the affordability period on rental units may be terminated at the discretion of the tribe.

(b) *Rehabilitation not involving purchase.* Housing that is currently owned by a family qualifies as affordable housing only if—

(1) The value of the property, after rehabilitation, does not exceed 95% of

the median purchase price for the type of single family housing (1- to 4-family residence, condominium unit, combination manufactured home and lot, or manufactured home lot) for the area as determined by HUD, and which may be appealed in accordance with 24 CFR 203.18b; and

(2) The housing is the principal residence of an owner whose family qualifies as a low-income family at the time HOME funds are committed to the housing.

§ 954.308 Prohibited activities.

(a) HOME funds may not be used to—

(1) Provide a project reserve account for replacements, a project reserve account for unanticipated increases in operating costs, or operating subsidies; except as authorized under § 954.302; (2) Provide nonfederal matching contributions required under any other Federal program;

(3) Provide assistance in connection with programs authorized under part 950 (Indian Housing Programs) of this title;

(4) Provide assistance to eligible low-income housing under part 248 (Prepayment of Low Income Housing Mortgages) of this title; or

(5) Provide assistance (other than tenant-based rental assistance or assistance to a homebuyer to acquire housing previously assisted with HOME funds) to a project previously assisted with HOME funds during the period of affordability established by the grantee under § 954.306 or § 954.307. However, additional HOME funds may be committed to a project up to one year after project completion (see § 954.500), but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under § 954.400.

(b) Grantees may not charge monitoring, servicing and origination fees in HOME-assisted projects. However, grantees may charge nominal application fees (although these fees are not an eligible HOME cost) to project owners to discourage frivolous applications.

Subpart D—Project Requirements

§ 954.400 Maximum per-unit subsidy amount.

The amount of HOME funds that a grantee may invest on a per-unit basis in affordable housing may not exceed the total development cost standard for the area, as issued by HUD under 24 CFR 950.220. These total development cost standards are available from HUD Area ONAPs.

§ 954.401 Property standards.

(a) Housing that is assisted with HOME funds, at a minimum, must meet the housing quality standards in § 882.109 of this title. In addition, housing that is newly constructed or substantially rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances. The grantee must have written standards for rehabilitation. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

(b) The following requirements apply to housing for homeownership that is to be rehabilitated after transfer of the ownership interest:

(1) Before the transfer of the ownership interest, the grantee must:

(i) Inspect the housing for any defects that pose a danger to health; and

(ii) Notify the prospective purchaser of the work needed to cure the defects and the time by which defects must be cured and applicable property standards met.

(2) The housing must be free from all noted health and safety defects before occupancy and not later than 6 months after the transfer for completion of the transitional housing tenancy period.

(3) The housing must meet the applicable property standards (at a minimum, the housing quality standards in § 882.109 of this title) not later than 2 years after transfer of the ownership interest.

§ 954.402 Tenant and participant protections.

(a) *Lease.* The lease between a tenant and an owner of rental housing assisted